

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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*Federal Communications Commission
Office of Secretary*

In the Matter of)

Closed Captioning and Video Description)
of Video Programming)Implementation of Section 305 of the)
Telecommunications Act of 1996)

Video Programming Accessibility)

MM Docket No. 95-176

**COMMENTS OF
SBC COMMUNICATIONS INC., SOUTHWESTERN BELL VIDEO SERVICES, INC.,
AND SOUTHWESTERN BELL MEDIA VENTURES, INC.**

SBC Communications Inc. and its subsidiaries, Southwestern Bell Video Services, Inc. ("SBVS") and Southwestern Bell Media Ventures, Inc. ("SBMV"), (generally referred to herein collectively as "SBC") hereby submit these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released January 17, 1997. SBC currently provides or plans to provide multichannel video services through franchised cable systems and through other video programming distribution systems. SBC accordingly has a substantial interest in the Commission's implementation of the closed captioning provisions of the Telecommunications Act of 1996 (the "1996 Act").

SBC generally supports the Commission's intention of crafting rules for closed captioning that will maximize access to multichannel programming by hearing-impaired viewers. SBVS and SBMV have previously committed to equip their cable systems with technology capable of transmitting intact all closed captioned programming.

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While the Commission's general goal is laudable, SBC submits that the primary responsibility for compliance with closed captioning rules is most appropriately positioned with the programming content creator rather than with the cable operator or local broadcaster. Cable operators and local broadcasters should be required to pass the captioned programming to the end user, but, by requiring the content creator to bear the responsibility of complying with the closed captioning requirements, the Commission would ensure that the maximum amount of video programming is captioned for as wide an audience as possible.

I. CLOSED CAPTIONING REQUIREMENTS SHOULD BE IMPOSED ON THE CREATORS OF PROGRAMMING CONTENT, NOT ON THOSE THAT MERELY TRANSMIT THE PROGRAMMING.

In the NPRM, the Commission proposed that “the responsibility for compliance with our closed captioning requirements should be placed on video programming providers, which we define as all entities who provide video programming directly to a customer’s home, regardless of the distribution technologies employed by such entities.”¹ In other words, the Commission proposed placing primary responsibility for compliance with closed captioning requirements on the distributors of programming rather on the creators of such programming. At the same time, however, the Commission recognized that, “from a practical standpoint, captioning at the production stage is often the most efficient manner to include closed captioning with video programming.”²

Furthermore, Congress has recognized that “[i]t is clearly more efficient and economical to caption programming *at the time of production* and to distribute it with captions than to have each

¹NPRM, ¶ 28.

²NPRM, ¶ 30.

delivery system or local broadcaster caption the program.”³ The Commission’s proposed assignment of responsibility for captioning is inherently inefficient and uneconomical since it places the captioning obligation on multichannel providers that have no role, other than with respect to locally-originated programming, in the creation and production of programming.

The Commission cannot justify its misallocation of the responsibility for captioning by arguing that Congress limited the closed captioning requirement to any particular link in the distribution chain, i.e., to distributors but not to programming creators. As the Commission noted in the NPRM,⁴ the legislative history of the 1996 Act confirms that Congress intended that the term “provider” be defined expansively to include television broadcast stations, cable operators, *cable networks*, and “other services” that provide programming to the public.⁵ Hence, the Commission need not impose closed captioning requirements on multichannel video programming distributors (“MVPDs”) in order to ensure that programming is captioned as required by the 1996 Act. In addition to the authority conferred on it by Section 305 of the 1996 Act to require programmers to supply closed captions, the Commission currently has jurisdiction over programmers under its program access rules. Therefore, the Commission has jurisdiction over programmers vis-a-vis closed captioning requirements and program access rules.

In the NPRM, the Commission stated its belief that “the programming providers are in the best position to ensure that the programming they distribute is closed captioned because of their role in the purchasing of programming from producers.”⁶ This proposed conclusion is not correct, since

³H.R. Report 104-204, 104th Congress, 1st Sess. at 114 (1995) (“House Report”) [emphasis added].

⁴NPRM, ¶ 29.

⁵House Report at 114.

⁶NPRM, ¶ 28.

the cable operator or programming distributor can only indirectly force a programming supplier to caption its programming if such supplier believes that it is uneconomical to do so.⁷ The direct authority to require closed captioning rests with the Commission. Thus, the Commission's enforcement authority should be applied directly to the acknowledged, most appropriate source of closed captioning, not indirectly through the Commission's unwilling conscript, the distributor. Since the programming creator or content provider is in the best position to determine whether it is necessary to provide captioning for programming in order to maximize access by the hearing-impaired, as well as whether certain types of programming would be exempt from captioning under the Commission's rules, such programming creators and content providers should be the parties required to comply with the Commission's rules.

Imposing the obligation for compliance with closed captioning rules on distributors is not appropriate because of the burden such an obligation would represent. The difficulty and expense of tracking whether the programming on each channel contains the required percentage of captioned programming or whether such channels might be eligible for exemption negate the Commission's perception that the distributor is the point in the programming distribution chain where the requirements would be most easily borne. When the Commission considers the number of channels that can be carried on systems today, particularly on digital video systems that can transmit literally hundreds of channels, then it can comprehend the full extent of the burden that it has proposed to create.

⁷NPRM, ¶ 30.

If, despite the inappropriateness of imposing closed captioning compliance requirements on distributors of video programming, the Commission determines that cable operators should nonetheless be obligated to bear that responsibility, then the Commission should determine that:

- any captioned programming offered on “multiplexed” channels will count toward a provider’s captioning “quota.”
- users of leased access channels will bear exclusive responsibility for captioning their programming material.
- broadcast stations will bear exclusive responsibility for captioning their programming.
- any individual exemptions for specific programs will apply automatically to all multichannel distribution technologies on a uniform basis.
- creators of video programming should be required to certify to their distributors on a quarterly basis that their programming complies with the Commission’s closed captioning rules.

II. THE COMMISSION’S PROPOSED PUBLIC ACCESS EXEMPTION SHOULD APPLY TO ALL PROGRAMMING OFFERED ON PEG ACCESS CHANNELS.

The Commission has correctly stated that the financial costs of closed captioning would be an excessive burden on public access programmers, many of whom are local citizens who produce community-based programs on a non-profit basis.⁸ The same conclusion is true with respect to PEG channels as well. The Commission need not determine whether certain types of PEG programming should be subject to its closed captioning rules. The establishment and use of PEG channels is a matter of negotiation between cable operators and local franchising authorities. The local franchising authorities should, however, be responsible for funding any closed captioning of PEG channels. In some instances, PEG requirements exceed 10 channels in a franchise area. Imposing the funding

⁸NPRM, ¶¶ 74-74.

costs of captioning the programming on those channels on the cable operator would be unfair, inappropriate, and unsustainable.

III. THE COMMISSION SHOULD NOT IMPOSE ANY ADDITIONAL COMPLIANCE REQUIREMENTS ON MULTICHANNEL PROGRAMMING PROVIDERS.

Since the Commission's rules currently require cable operators to deliver captioned programming to the subscriber intact, no additional technical standards are necessary to ensure compliance with the requirement to caption programming. The Commission also should not adopt any non-technical standards for closed captioning, e.g., accuracy of transcription, punctuation, or placement.

A requirement that cable operators monitor compliance with technical or non-technical captioning standards would be extremely costly and administratively burdensome. Such a requirement is another example of the Commission's conscription of cable operators to act as the Commission's police force. The burden for ensuring accuracy, if necessary, should reside with the producer of programming.

IV. THE COMMISSION SHOULD DETERMINE THAT, UNDER PROGRAM ACCESS AND RETRANSMISSION CONSENT RULES, PROGRAMMERS ARE REQUIRED TO MAKE CAPTIONED PROGRAMMING EQUALLY AVAILABLE TO CABLE AND NON-CABLE OPERATORS.

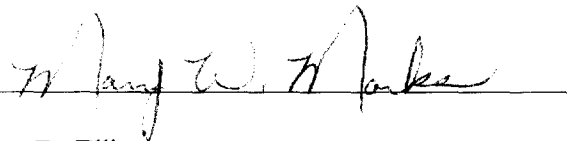
Vertically integrated programmers and television stations that elect retransmission consent must be required to make captioned programming available on equal terms and conditions to cable operators and to other multichannel programming distributors. Otherwise, programmers could discriminate against competitive distributors by offering programming captioned at the point of origination only to affiliated incumbent cable operators.

V. CONCLUSION

As stated herein, SBC supports the Commission's intention of crafting rules for closed captioning that will maximize access to multichannel programming by hearing-impaired viewers, but the primary responsibility for compliance with closed captioning rules is most appropriately positioned with the programming content creator rather than with the cable operator or local broadcaster. Cable operators and local broadcasters would be required to pass the captioned programming to the end user intact. However, by requiring the content creator to bear the responsibility of complying with the closed captioning requirements, the Commission would ensure that the public interest is served since the maximum amount of video programming would be captioned for as wide an audience as possible. SBC urges the Commission to adopt the requests set forth herein.

Respectfully submitted,

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By: 

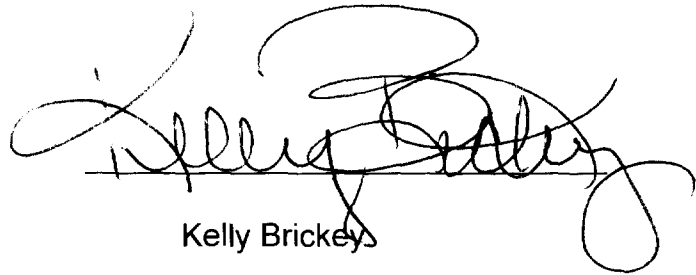
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February 28, 1997

CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing " Comments of Southwestern Bell Telephone Company.", has been served February 28, 1997, to the Parties of Record.



Kelly Brickey

February 28, 1997

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